No. 15077

In the United States Court of Appeals for the Ninth Circuit

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

ESSEX WIRE CORPORATION, A MICHIGAN CORPORATION, D/B/A ESSEX WIRE CORPORATION OF CALIFORNIA, RESPONDENT

ON PETITION FOR ENFORCEMENT OF AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD

THEOPHIL C. KAMMHOLZ,
General Counsel,
MARCEL MALLET-PREVOST,
Assistant General Counsel.
SAMUEL M. SINGER,
MYRON S. WAKS,
Attorneys,
National Labor Relations Board.

INDEX

AUTHORITIES CITED

398057—56——1

In the United States Court of Appeals for the Ninth Circuit

No. 15077

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

ESSEX WIRE CORPORATION, A MICHIGAN CORPORATION, D/B/A ESSEX WIRE CORPORATION OF CALIFORNIA, RESPONDENT

ON PETITION FOR ENFORCEMENT OF AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD

JURISDICTION

This case is before the Court upon petition of the National Labor Relations Board for enforcement of its order (R. 4–5)[1] issued against the Essex Wire Corporation, a Michigan corporation, d/b/a Essex Wire Corporation of California (hereinafter referred to as the Company), on July 28, 1955, pursuant to Section 10 (c) of the National Labor Relations Act, as amended (61 Stat. 136, 29 U. S. C., Secs. 151 *et seq.*). The Board's decision and order are reported

[1] References to the printed record are designated "R." References preceding a semicolon are to the Board's findings; references following a semicolon are to the supporting evidence.

in 113 NLRB 344. This Court has jurisdiction under Section 10 (c) of the Act, the unfair labor practices having occurred at San Diego, California, within this judicial circuit.[2]

STATEMENT OF THE CASE

I

The Board's findings of fact and conclusions of law

Briefly, the Board found that the Company violated Section 8 (a) (1) of the Act by demanding that an employee surrender signed union membership cards in his possession, by prohibiting rival union activity during employee rest periods, and by requiring the removal of buttons denoting adherence to the rival union while permitting employees to wear buttons of the incumbent union. The subsidiary facts upon which these findings were based, which were not in dispute before the Board (R. 130, n. 2) are summarized below.

At all times material to this case the exclusive bargaining representative for the Company's employees at San Diego was Silvergate District Lodge No. 50 for and in behalf of Automotive Electric Lodge No. 1930 of the International Association of Machinists, hereinafter referred to as the IAM. The collective bargaining agreement between the Company and

---

[2] The respondent Company is a multistate business which manufactures and sells wire products in various states of the United States. A substantial amount of the product manufactured at the Company's San Diego plant is shipped to places outside the State of California. The respondent admits, and the Board has found, that the Company is engaged in commerce within the meaning of the Act (R. 30–31; 139–140, 16, 23).

the IAM during the period here relevant was entered into January 15, 1953, and extended through May 15, 1954 (R. 38; 159–162).

Late in 1953, several of the Company's employees became interested in the United Mine Workers, District 50 (hereinafter referred to as the UMW), as their bargaining representative and in December 1953 started an organizational campaign on behalf of the UMW (R. 39; 314, 322, 336–337). Active in this campaign were employees J. C. Hamilton, his wife, Elizabeth Ann Hamilton, his sister, Mrs. Loraine Evans, and James A. Juhl (R. 39; 194–195, 220, 306, 314, 337). Mrs. Evans was designated as the chairman of the UMW's organizational campaign and with other employees, undertook the solicitation of authorization cards before and after the holidays, both at the homes of the employees and at the plant (R. 39; 195, 197, 314, 336–337). Solicitation on behalf of the UMW at the plant was confined to nonworking time, including lunch periods, and the established morning and afternoon rest periods (R. 39–40; 197, 212, 226, 314–316, 336, 341, 451–452, 457–458, 486).[3]

Early in January 1954, employee Juhl helped to distribute UMW "membership" cards (R. 40; 194–195). On the day after he initiated this activity he was accosted by his department foreman, Clyde Casey (R. 40; 195). Foreman Casey asked Juhl if he was passing out UMW membership cards. When Juhl

[3] The lunch period for the plant was from 12–12:30 p. m.; there were 10-minute rest periods at 10 a. m. and 2:30 p. m. (R. 208–209, 219).

admitted that he was, Casey asked him if he had been able to get any of them signed. Juhl said he had. Casey then asked "What are you trying to do make a fool out of me?" When Juhl replied that he was not, Casey asked him where the cards were. Juhl answered that he had the cards with him. Casey then asked, "Don't you like your job here?" Juhl replied that he did and Casey then told him, "I want those cards in my office in five minutes" (R. 40–41; 195–196, 18–19, 25). Juhl, faced with this demand, and at what he believed to be the risk of discharge, returned the cards to the employees who had signed them and then reported to Casey what he had done (R. 41; 196). Casey then informed Juhl that in order for him to campaign for and get a new bargaining representative he must first notify the "front office" and then wait until the IAM contract had expired and a representation election had been held (R. 41; 196).

The UMW's organizational campaign gave rise to considerable discussion among the employees with respect to the right of the UMW adherents to engage in such activity (R. 41–42; 169–170, 448, 450, 428). Production Manager Simon became aware of the situation and in the early part of January he telephoned the Company's legal department in Detroit, Michigan, for advice with respect to the course of conduct he ought to follow (R. 42; 166, 172, 173). In substance Simon was advised to follow a middle course and to avoid any display of partisanship in the factual dispute, but to insist that no organizational activity be conducted during working hours (R. 42; 171–172).

Simon was also informed that the distribution of union pins and their passage from one employee to another during working hours constituted union activity on company time which the Company could prohibit (*Ibid.*). Thereafter, Simon instructed the Company's supervisors, orally, to maintain this middle course and to insist that Company time be devoted to work (R. 42; 168, 173). Within a day after his Detroit call Simon issued a warning to employee Gerald W. Pipmeier, a UMW adherent, about passing UMW pins among the employees during working hours (R. 43–44; 173–174).

On January 14, 1953, within two days after Simon's instructions from Detroit, the Company posted the following notice (R. 44–45; 158–159, 172, 278–280).

> TO: ALL EMPLOYEES
>
> IT HAS COME TO OUR ATTENTION THAT OUR EMPLOYEES ARE ENGAGED IN UNION CAMPAIGNING DURING WORKING HOURS. ANY SUCH CAMPAIGNING FOR ANY UNION DURING WORKING HOURS IS CONTRARY TO COMPANY RULES AND, THEREFORE, THOSE INVOLVED ARE SUBJECT TO DISCIPLINARY ACTION.
>
> WE REQUEST THOSE INVOLVED CAMPAIGNING FOR ANY PURPOSES ON COMPANY TIME REFRAIN FROM THESE PRACTICES IN ORDER THAT WE MAY NOT BECOME INVOLVED IN SOME UNDESIRABLE INCIDENTS.

Production Manager Simon interpreted this rule to preclude any campaign activity during the morning

and afternoon rest periods for the reason that the employees were paid for this time by the Company; and he so instructed the UMW adherents (R. 45–47, 48–50, 83–84; 19, 25, 197, 211–212, 226). Thus shortly after the notice was posted Foreman Casey took Juhl to see Simon, who asked Juhl whether he was campaigning on company time (R. 45, 83; 174, 197). Juhl denied that he was doing any campaigning on company time but admitted to Simon that he was campaigning on company property during the lunch hour and rest periods. At that time Simon instructed Juhl that the rest periods were company time because the employees were being paid for it (R. 45–47, 83–84; 197, 211–212). Again, on February 8, when Simon was speaking with J. C. Hamilton about Hamilton's UMW activity, Simon warned Hamilton that there was to be no campaigning on company time and in the course of this conversation Simon stated, "I pay you for the break and that is my time" (R. 49–50; 226).

For a number of years prior to the advent of the UMW activity, many employees at the San Diego plant had worn IAM buttons while at work (R. 47; 389–391, 428, Tr. 578).[4] With the start of the UMW organizational campaign, the employees were urged by the IAM to wear buttons as a sign of their "loyalty" to that organization, and many more employees did so (R. 47, 86; Tr. 578, 390–391). On one occasion around February 1, 1954, one of the IAM representatives engaged in the distribution of IAM buttons to

[4] Petitioner's designation of page 578 of the original transcript was inadvertently omitted from the printed appendix.

the employees during working hours (R. 47–48; 221–222, 239–240). On Monday, February 8, pursuant to the advice of a UMW representative, the Hamiltons publicly acknowledged their adherence to that organization by donning UMW buttons at work (R. 48; 220, 314, 321). Several IAM adherents brought to Foreman King's attention the fact that Mrs. Hamilton was wearing a UMW button, and complained of the "dissension" which the UMW campaign had engendered (R. 55, 86; 448, 450, 455–458). King sought advice from Simon as to the Company's policy in this situation, but without waiting for Simon's answer, approached Mrs. Hamilton at her machine and asked if she was not aware of the Company rule prohibiting campaigning on company time (R. 54–55; 448–449, 315–316). When Mrs. Hamilton replied that she was not campaigning on company time King pointed to her UMW button, stating "You are wearing that badge" (R. 54–55; 316). Mrs. Hamilton insisted that this was not campaigning, but King ordered her to take off the UMW button (R. 54–55; 316). When Mrs. Hamilton, referring to the IAM buttons which were being worn, complained "I [don't] see why I'm not allowed to wear my badge if other people are," King replied merely, "Well, we think you are campaigning and you have to take your badge off," and walked away (R. 54–55; 316).

On the morning of February 10, pursuant to the renewed advice of a UMW representative, Mrs. Hamilton again wore her UMW button at work (R. 55; 316, 323–324). This time, shortly after the work

began, Mrs. Hamilton was approached by Section Foreman Kresin who ordered her to remove her UMW button (R. 55–56; 317).[5] Kresin stated to Mrs. Hamilton, "Ann, I don't want you to start any fussing or fighting back in the plant about wearing your badge" (R. 55–56; 317). Mrs. Hamilton protested that the other employees were wearing union buttons and assured Kresin that she wasn't "going to say anything to anyone," that "if anything [was] said, they [would] say it to [her]." (R. 55–56; 317, 318.) Kresin did not comment on Mrs. Hamilton's reference to the IAM buttons that were being freely worn but insisted that she remove her UMW button and walked away (R. 56; 317–318).[6] There is no evidence of any further UMW organizational activity at the San Diego plant after February 10, 1954 (R. 59).

On the basis of the foregoing facts the Board concluded that the Company by demanding the surrender of executed union authorization cards, prohibiting union solicitation during nonworking hours, and prohibiting the wearing of union buttons by the adherents of one of two competing unions, had interfered with, restrained, and coerced its employees in violation of their Section 7 rights and thereby had violated Sec-

---

[5] Earlier in the week employees Redden and Dorothy Randall, both adherents of the IAM, had complained to Kresin about the UMW buttons (R. 56; 428–430).

[6] King, as well as Kresin, admitted that they were aware of the IAM buttons being worn in the plant (R. 428–429, 447–448).

tion 8 (a) (1) of the Act.[7] In so doing, the Board rejected respondent's argument that employees' concerted activity is unprotected when undertaken for a union not in compliance with the filing and reporting requirements of Section 9 (f), (g) and (h) of the Act. In addition, the Board found no basis in the record to support respondent's further contention that Hamilton and Evans were "fronting" for the UMW when they filed charges with the Board (R. 129–130, 33–34).

II

The Board's order

The Board's order (R. 133–135) requires the respondent Company to cease and desist from the unfair labor practices found and from any like or related manner interfering with, restraining, or coercing its employees in the exercise of the rights guaranteed to them by the Act; affirmatively, it requires the Company to post appropriate notices.

---

[7] The Trial Examiner in resolving the conflicting testimony of witnesses failed to find that the Company had engaged in other acts of interference as the General Counsel had contended (R. 45–59, 84–85, 87–90). In addition, the Trial Examiner dismissed that part of the complaint which alleged that Mrs. Evans was discriminatorily discharged by the Company but found that Mrs. Hamilton was constructively discharged on February 10, 1954, in violation of Section 8 (a) (3) (R. 119–120). The Board adopted the Trial Examiner's findings in full except those relating to Mrs. Hamilton, and dismissed the allegations in the complaint relating to her discharge (R. 128–133).

ARGUMENT

I

The Board properly found that respondent interfered with, restrained and coerced its employees in violation of Section 8 (a) (1) of the Act

The facts set forth *supra,* pp. 3–8, establish that respondent demanded the surrender of executed UMW authorization cards by employee Juhl, applied its rule prohibiting union solicitation to the employees' rest periods, and forbade the wearing of UMW buttons while permitting the adherents of the incumbent union to wear IAM buttons without restriction. Respondent took no exception to the Trial Examiner's findings that these incidents occurred, but only to the conclusion that they constituted violations of the Act (R. 125–128).[8] For the reasons stated below we respectfully submit that the conclusions reached by the Trial Examiner and adopted by the Board are entirely proper.

As the Board stated (R. 82), Casey's demand that Juhl surrender to him executed UMW cards "clearly represented an unlawful intrusion upon the statu-

[8] Respondent's failure to file such exceptions precludes respondent from challenging the Trial Examiner's findings in this regard. Section 10 (e); *N. L. R. B.* v. *Cheney California Lumber Co.*, 327 U. S. 385; *N. L. R. B.* v. *Marshall Field & Co.*, 318 U. S. 253, 255–256; *N. L. R. B.* v *Seven-up Bottling Co*, 344 U. S. 344, 350; *N. L. R. B.* v. *Pinkerton's National Detective Agency, Inc.*, 202 F. 2d 230, 233 (C. A. 9). In any event, these findings were based on direct testimony which was credited by the Trial Examiner and such credibility findings are entitled to acceptance by this Court. *N. L. R. B.* v. *San Diego Gas & Electric Co.*, 205 F. 2d 471, 475 (C. A. 9); *N. L. R. B.* v. *West Coast Casket Co.*, 205 F. 2d 902, 907 (C. A. 9).

torily guaranteed right of Respondent's employees to engage in concerted activity for their mutual aid and protection." Casey's demand was accompanied by the accusation that Juhl was trying to make a "fool" of him and by an implied threat of discharge if he solicited employees for union membership. Such conduct on the part of Casey which clearly tended to interfere with, restrain and coerce the employees in the exercise of their right to engage in organizational activity was violative of Section 8 (a) (1) of the Act. See *N. L. R. B.* v. *Globe Wireless,* 193 F. 2d 748, 751–752 (C. A. 9); *N. L. R. B.* v. *West Coast Casket Co.,* 205 F. 2d 902, 904 (C. A. 9); *N. L. R. B.* v. *Kanmak Mills, Inc.,* 200 F. 2d 542, 543 (C. A. 3).

Respondent in its answer to the amended complaint (R. 25) admitted that Casey had "demanded of James A. Juhl that he turn over certain cards" to him, but contended that the demand was prompted by the fact that Juhl solicited during "working hours." However, the record does not show that Juhl solicited the cards in question during working hours or that Casey connected his demand for the cards with union activity during working hours (R. 40–41, 82–83; 196, 197). As the Board stated in respect to respondent's contention (R. 82–83), "These averments in the Respondent's Answer, of course, cannot be treated as evidence."

Similarly, the Board's finding that respondent had further violated Section 8 (a) (1) by applying its rule prohibiting union activity to nonworking hours, more particularly to the established employee rest

periods, was proper. Respondent did not challenge the validity of the settled rule that absent special considerations relating to production or plant discipline (not urged or shown to be here present), an employer may not issue a broad rule prohibiting union solicitation by its employees on company property. *Republic Aviation Corp.* v. *N. L. R. B.,* 324 U. S. 793, 803–804, reaffirmed in *N. L. R. B.* v. *Babcock & Wilcox Co.,* 351 U. S. 105, 113. Respondent, however, takes the position that an employer may prohibit such activity during "company time"—i. e., during time for which the employees are being paid by the Company, notwithstanding the fact that such time may be nonworking time. This precise issue was treated by the Court of Appeals for the Fifth Circuit in *Olin Industries, Inc.* v. *N. L. R. B.,* 192 F. 2d 613, certiorari denied, 343 U. S. 919, and the Court's rationale in dismissing this contention fully sets forth the Board's position in this matter. The Court stated (at p. 617):

> * * * The argument that since the employees were paid during these lunch and rest periods they actually constituted company time and were subject to company rules is without support or foundation. We think the Board has properly approached this problem of solicitation on company property on the basis of the distinction between actual working and nonworking time, rather than on the basis of the immaterial distinction between paid and unpaid time. The proper rule was recognized by the Board in *Peyton Packing Company,* 49 N. L. R. B. 828, 843–844, enforced by this Court, *N. L. R. B.* v. *Peyton Packing Co.,* 142 F. 2d 1007, certiorari denied, 323 U. S. 730, 65 S. Ct.

66, 89 L. Ed. 585, and quoted with approval by the Supreme Court in *Republic Aviation Corp.* v. *N. L. R. B.* and (*N. L. R. B* v. *LeTourneau*), 324 U. S. 793, 803–804, 65 S. Ct. 982, 89 L. Ed. 1372; "The Act, of course, does not prevent an employer from making and enforcing reasonable rules covering the conduct of employees on company time. Working time is for work. It is therefore within the province of an employer to promulgate and enforce a rule prohibiting union solicitation during working hours. Such a rule must be presumed to be valid in the absence of evidence that it was adopted for a discriminatory purpose. It is no less true that time outside working hours, whether before or after work, or *during luncheon or rest periods,* is an employee's time to use as he wishes without unreasonable restraint although the employee is on company property * * *." [Emphasis added.] See, also, *N. L. R. B.* v. *May Department Stores,* 8 Cir. 154 F. 2d 533, 537.

Any other rule might seriously impair the right of employees to organize collectively under the Act by placing a premium on attempts by employers to allocate wages or salaries and company time over the entire work week, so as to prohibit employees from discussing union activities or soliciting union membership at practically any convenient time. Clearly the Act does not require enforcement of such a harsh rule of silence upon employees.

See also, *N. L. R. B.* v. *The Monarch Machine Tool Company,* 210 F. 2d 183, 187 (C. A. 6), certiorari denied, 347 U. S. 967.

Finally, the application by respondent's officials of its rule prohibiting union activity to enforce a re-

quirement that UMW buttons would have to be removed while at the same time putting no restrictions on the right to wear IAM buttons was discriminatory and violated Section 8 (a) (1) of the Act. The wearing of union buttons has long been recognized as a traditional and effective instrument in the conduct of a union's organizational campaign.[9] And wholly apart from whether it is discriminatorily applied, an employer's prohibition against the wearing of the usual union insignia in the absence of special considerations relating to plant discipline has been held to be unwarranted interference with the employees' right to engage in organizational activity. *N. L. R. B.* v. *Republic Aviation Corp.*, 324 U. S. 793, 802; *Kimble Glass* v. *N. L. R. B.*, 230 F. 2d 484 (C. A. 6), enforcing 113 NLRB 577; *Caterpillar Tractor Co.* v. *N. L. R. B.*, 230 F. 2d 357, 359 (C. A. 7). Respondent has not contended nor does the record show the existence of special circumstances such as would justify a restriction on the employees' right generally to wear union insignia.[10] Furthermore, under no circumstances could respondent as here, deprive a rival union of the right to an important organizational technique while permitting it to the incumbent union. For by so handicapping the organizational campaign of one of two unions competing to represent its employees,

---

[9] As the Board stated in *Salant & Salant, Inc.*, 92 NLRB 417, 426: "The wearing of union buttons by employees * * * has an important function during a union campaign. It prompts solidarity among union members, and signifies their membership and determination to accomplish the unionization."

[10] Compare *Boeing Airplane Co.* v. *N. L. R. B.*, 217 F. 2d 369 (C. A. 9).

the employer interferes with "that freedom of choice [of a collective bargaining agent] which is the essence of collective bargaining" and which Section 7 seeks to guarantee (*I. A. M.* v. *N. L. R. B.*, 311 U. S. 72, 79).

Accordingly, the Board properly concluded that respondent interefered with, restrained and coerced its employees in violation of Section 8 (a) (1) of the Act.

II

The Board properly rejected respondent's contentions relating to Section 9 (f), (g), and (h) of the Act

At the hearing before the Board, respondent pointed to the fact that the UMW was not in compliance with the filing requirements of Section 9 (f), (g), and (h) of the Act and urged that the right to self-organization guaranteed by Section 7 of the Act does not extend to organizational activity undertaken on behalf of a noncomplying union. In its brief to the Trial Examiner, respondent relied on the noncompliance status of the UMW in urging that employees Hamilton and Evans, while filing separate charges as individuals (R. 3–5, 11–13) were in fact "fronting" for the UMW. Before the Board respondent without amplification took exception merely to the finding that the UMW was a labor organization within the meaning of the Act. While it would appear that respondent's failure to make more explicit its contention before the Board would preclude it from raising the issue before this Court,[11] respondent's

[11] *Supra*, p. 10, n. 8.

defenses stemming from the noncompliance of the UMW in any event are without merit.

It is now settled law that employees' concerted activity does not lose the protection otherwise afforded by Section 7 of the Act because it is undertaken on behalf of a union which is not in compliance with Section 9 (f), (g), and (h). *United Mine Workers* v. *Arkansas Flooring Co.,* 351 U. S. 62; *News Printing Co., Inc.* v. *N. L. R. B.,* 231 F. 2d 767, 769 (C. A. D. C.,); *N. L. R. B.* v. *Ronney & Sons Mfg. Co.,* 206 F. 2d 730, 732 (C. A. 9); *N. L. R. B.* v. *Pecheur Lozenge Co.,* 209 F. 2d 393, 402–403 (C. A. 2), certiorari denied, 347 U. S. 593. "Section 7, which deals with the employees' rights to self-organization and representation, makes no reference to any need that the employees' chosen representative must have complied with Sections 9 (f), (g), and (h) * * * Subsections (f), (g), and (h) of Section 9 merely describe advantages that may be gained by compliance with their conditions. The very specificity of the advantages to be gained and the express provision for the loss of these advantages imply that no consequences other than those listed shall result from noncompliance." *United Mine Workers* v. *Arkansas Flooring Co.,* 351 U. S. at pp. 72–73.

Similarly, without merit is respondent's contention that while they filed charges as individuals, employees Hamilton and Evans were "fronting" for the UMW, allegedly the real party in interest in the proceeding. The question whether or not an employee filing charges is "fronting" for a noncomplying

union is a question of fact. *Southern Furniture Mfg. Co.* v. *N. L. R. B.*, 194 F. 2d 59, 61 (C. A. 5), certiorari denied 343 U. S. 964; *N. L. R. B.* v. *Coal Creek Co.*, 204 F. 2d 579, 582 (C. A. 10). However, as the Board found (R. 34), "nothing in the charges, the First Amended and Consolidated Complaint, or the evidence suggests an attempt, in this case, to vindicate or assert any right or interest of the Mine Workers as a labor organization under the statute." Both employees Hamilton and Evans had been employed by the Company for many months prior to the UMW's appearance on the scene (R. 313, 336). It appears that their only connection with the UMW was as employees sufficiently interested in the UMW as a bargaining agent to solicit members on its behalf, Mrs. Evans acting as chairman of the group of employees who were active for the UMW. And, contrary to respondent's contention, the fact that an employee takes "quite an active part in organizational activities" on behalf of a noncomplying union is "not of itself decisive" of the fronting issue. *N. L. R. B.* v. *Beaver Meadow Creamery, Inc.*, 215 F. 2d 247, 249–250 (C. A. 3). The courts have uniformly held that the fact that the employees who had filed individual charges were officers of or had actively solicited for a noncomplying union, was insufficient to establish that in filing the charges they were "fronting" for the union. *N. L. R. B.* v. *Clausen*, 188 F. 2d 439, 443 (C. A. 3), certiorari denied, 342 U. S. 868; *N. L. R. B.* v. *Coal Creek Co.*, 204 F. 2d 579, 582 (C. A. 10); *Beaver Meadowbrook, supra*, 215 F. 2d at pp.

249–250.[12] Here, as in the cases noted, the charges filed were substantially the "assertions of individual rights"[13] of the employees; in both cases the employees, believing that their discharges had been discriminatorily motivated, were seeking reinstatement to their jobs and back pay and an end to the employer's unlawful interference in their organizational activity.[14]

---

[12] Indeed, as this Court has held, even where the disqualified union was active in assisting or directing the employees in preparing their charges, it does not follow that the employees, by accepting that assistance disqualified themselves. *N. L. R. B.* v. *Ronney & Sons Mfg. Co.*, 206 F. 2d 730, 731–732.

[13] *Ronney* case, *supra*, at p. 732.

[14] Respondent's reliance on *N. L. R. B.* v. *Happ Bros.*, 196 F. 2d 195 (C. A. 5) and *N. L. R. B.* v. *Alside*, 192 F. 2d 678 (C. A. 6), is misplaced. It was the particular combination of circumstances in the *Happ* and *Alside* cases which led the Courts to reverse the Board in finding that the charging parties were "fronting" for a non-complying union. In both cases the charging party was not only president and chief protagonist for the interested but disqualified union but also had filed charges on behalf of a great number of other union members, in addition to himself. In the instant case, neither of the employees was an officer of the UMW. The charge filed by Mrs. Evans, who was chairman of the employees engaged in UMW organizational activity, was limited strictly to her individual grievances (R. 11–13). Mrs. Hamilton's charge (R. 3–5) aside from alleging the discharge of one other employee (not named in the complaint or otherwise mentioned in the record) deals with her own grievances, alleging her discharge to discourage UMW membership and in general terms respondent's unlawful interference. Cf. *Southern Furniture Mfg. Co.* v. *N. L. R. B.*, 194 F. 2d 59, 61 (C. A. 5), certiorari denied, 343 U. S. 964; *N. L. R. B* v *Beaver Meadow Creamery, Inc.*, 215 F. 2d 247, 249–250 (C. A. 3).

The Board's order, which remedies the volations of Section 8 (a) (1) inures directly to the employees' benefit by vouchsafing their rights under Section 7. No particular union is named in the Board's order and no particular union is intended as the beneficiary of such order. The important individual rights which are thus assured to the employees "[are] not made less so because [the UMW] might *incidentally* benefit from the Board's order." *Ronney* case, *supra,* 206 F. 2d at p. 731 (emphasis supplied).

CONCLUSION

For the reasons stated above, we respectfully submit that a decree should issue enforcing the order of the Board.

THEOPHIL C. KAMMHOLZ,
General Counsel,
MARCEL MALLET-PREVOST,
Assistant General Counsel,
SAMUEL M. SINGER,
MYRON S. WAKS,
Attorneys,
National Labor Relations Board.

OCTOBER 1956.

APPENDIX

The relevant provisions of the National Labor Relations Act, as amended (61 Stat. 136, 29 U. S. C., Secs. 151, *et seq.*), are as follows:

RIGHTS OF EMPLOYEES

SEC. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 8 (a) (3).

UNFAIR LABOR PRACTICES

SEC. 8. (a) It shall be an unfair labor practice for an employer—

"(1) to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7;

* * * * *

"(3) by discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization * * *."

SEC. 9. * * *

(f) No investigation shall be made by the Board of any question affecting commerce concerning the representation of employees, raised by a labor organization under subsection (c) of this section, and no complaint shall be issued pursuant to a charge made by a labor organization under subsection (b) of section 10, unless such labor organization and any national or international labor organization of which such labor organization is an affiliate or constituent unit (A) shall have prior thereto filed with the Secretary of Labor copies of its constitution and bylaws and a report, in such form as the Secretary may prescribe, showing—

"(1) the name of such labor organization and the address of its principal place of business;

"(2) the names, titles, and compensation and allowances of its three principal officers and of any of its other officers or agents whose aggregate compensation and allowances for the preceding year exceeded $5,000, and the amount of the compensation and allowances paid to each such officer or agent during such year;

"(3) the manner in which the officers and agents referred to in clause (2) were elected, appointed, or otherwise selected;

"(4) the initiation fee or fees which new members are required to pay on becoming members of such labor organization;

"(5) the regular dues or fees which members are required to pay in order to remain members in good standing of such labor organization;

"(6) a detailed statement of, or reference to provisions of its constitution and bylaws showing the procedure followed with respect to, (a) qualification for or restrictions on membership, (b) election of officers and stewards, (c) calling

of regular and special meetings, (d) levying of assessments, (e) imposition of fines, (f) authorization for bargaining demands, (g) ratification of contract terms, (h) authorization for strikes, (i) authorization for disbursement of union funds, (j) audit of union financial transactions, (k) participation in insurance or other benefit plans, and (l) expulsion of members and the grounds therefor;"

and (B) can show that prior thereto it has—

"(1) filed with the Secretary of Labor, in such form as the Secretary may prescribe, a report showing all of (a) its receipts of any kind and the sources of such receipts, (b) its total assets and liabilities as of the end of its last fiscal year, (c) the disbursements made by it during such fiscal year, including the purposes for which made; and

"(2) furnished to all of the members of such labor organization copies of the financial report required by paragraph (1) hereof to be filed with the Secretary of Labor."

(g) It shall be the obligation of all labor organizations to file annually with the Secretary of Labor, in such form as the Secretary of Labor may prescribe, reports bringing up to date the information required to be supplied in the initial filing by subsection (f) (A) of this section, and to file with the Secretary of Labor and furnish to its members annually financial reports in the form and manner prescribed in subsection (f) (B). No labor organization shall be eligible for certification under this section as the representative of any employees, and no complaint shall issue under section 10 with respect to a charge filed by a labor organization unless it can show that it and any national or international labor organization of which it is an affiliate or constituent unit has complied with its obligation under this subsection.

(h) No investigation shall be made by the Board of any question affecting commerce concerning the representation of employees, raised by a labor organization under subsection (c) of this section, and no complaint shall be issued pursuant to a charge made by a labor organization under subsection (b) of section 10, unless there is on file with the Board an affidavit executed contemporaneously or within the preceding twelve-month period by each officer of such labor organization and the officers of any national or international labor organization of which it is an affiliate or constituent unit that he is not a member of the Communist Party or affiliated with such party, and that he does not believe in, and is not a member of or supports any organization that believes in or teaches, the overthrow of the United States Government by force or by any illegal or unconstitutional methods. The provisions of section 35 A of the Criminal Code shall be applicable in respect to such affidavits.

* * * * *

PREVENTION OF UNFAIR LABOR PRACTICES

SEC. 10. (a) The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in section 8) affecting commerce. This power shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, law, or otherwise: * * *

(c) * * * If upon the preponderance of the testimony taken the Board shall be of the opinion that any person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue and cause to be served on such person an order requiring such person to cease and desist from such unfair labor practice, and to take such affirmative

action including reinstatement of employees with or without back pay, as will effectuate the policies of this Act: * * *

(e) The Board shall have power to petition any circuit court of appeals of the United States (including the United States Court of Appeals for the District of Columbia), or if all the circuit courts of appeals to which application may be made are in vacation, any district court of the United States (including the District Court of the United States for the District of Columbia), within any circuit or district, respectively, wherein the unfair labor practice in question occurred or wherein such person resides or transacts business, for the enforcement of such order and for appropriate temporary relief or restraining order, and shall certify and file in the court a transcript of the entire record in the proceedings, including the pleadings and testimony upon which such order was entered and the findings and order of the Board. Upon such filing, the court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to grant such temporary relief or restraining order as it deems just and proper, and to make and enter upon the pleadings, testimony, and proceedings set forth in such transcript a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board. No objection that has not been urged before the Board, its member, agent, or agency, shall be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances. The findings of the Board with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall be conclusive. * * *

* * * * * *

U. S. GOVERNMENT PRINTING OFFICE: 1956